

RESOLUTION NO. 2008-1824

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING THE INTERIM TOWN MANAGER TO ENTER INTO A TOURIST BUREAU CONSULTING SERVICES AGREEMENT WITH WEDNER & FRIENDS, PROVIDING FOR IMPLEMENTATION OF AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE;

WHEREAS, the Town of Surfside has need of a Consultant to perform services in running the daily activities of the Town of Surfside Tourist Bureau; and

WHEREAS, Wedner & Friends has agreed to perform such services to the Town; and

WHEREAS, after conducting a good faith review of available sources, the Interim Town Manager has recommended that, pursuant to Section 3-13(3) of the Town Code, it is in the Town's best interest to waive the competitive bidding procedures; and

WHEREAS, the Town Commission has determined that it is in the best interests of the Town to enter into the Agreement attached hereto as Exhibit "A" with Wedner & Friends.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals are hereby adopted, confirmed, and incorporated herein.

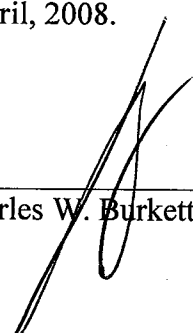
Section 2. Agreement Approved. The Agreement, attached hereto as Exhibit "A" between the Town and Wedner & Friends is hereby approved, and the Town

Mayor is hereby authorized to execute the Agreement, on behalf of the Town, once approved as to form and legal sufficiency by the Town Attorney.

Section 3. **Implementation.** The Town Manager is hereby authorized to take all action necessary to implement this Resolution and the Agreement in accordance with the terms, conditions and purposes of this Resolution and the Agreement.

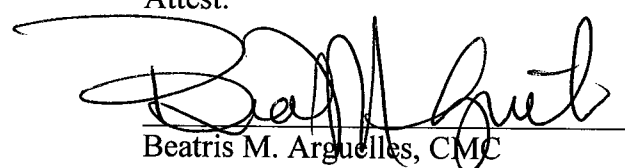
Section 4. **Effective Date.** That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED on this 8th day of April, 2008.




Charles W. Burkett, Mayor

Attest:



Beatris M. Arguelles, CMC
Town Clerk

**APPROVED AND TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

Resolution No. 2008-1824

AGREEMENT FOR
TOURIST BUREAU CONSULTING SERVICES
BETWEEN
TOWN OF SURFSIDE, FLORIDA
AND
WEDNER & FRIENDS

THIS AGREEMENT is made this _ day of March, 2008 by and between the Town of Surfside, Florida (the "Town") and Wedner & Friends (the "Consultant").

WHEREAS, the Town desires to engage the Consultant to perform the services specified below (the "Work"):

1. **SCOPE OF WORK-**

- 1.1 Consultant agrees to perform services in running the daily activities of the Town of Surfside Tourist Bureau ("Tourist Bureau"), facilitate strategic planning for the upcoming year, update the marketing and branding of the Tourist Bureau as well as development, planning and budgeting for the Fiscal Year 2008-09. In addition to the service of the Consultant's Principal, the Town agrees to utilize the services of the Consultant's administrative assistant in handling the Tourist Bureau responsibilities.
- 1.2 **Strategic Planning services will include:** to help facilitate the formulation of a mission statement and goals specific to the Tourist Bureau, to facilitate a retreat to decide on 2008-09 activities and branding, to create and produce a comprehensive program of new tourist marketing that reflects the current Town hotel, restaurant and business community, to explore avenues for innovative tourist marketing and outreach to stimulate tourism in the Town, to design a complete year plan for 2008-09 of events that encourage tri-county visitors while remaining in budget, exploration of additional revenue streams and opportunities for the Tourist Bureau in the Greater Miami-Dade community, and to complete the Town budget process for this department for FY 2008-09.
- 1.3 **Daily Activity services will include:** To manage staff personnel, to handle daily administration needs, to interact with other town departments for all tourism and other related activities, to help as required other town personnel with the resort tax and budget status, to oversee the creation and to implement all tourism marketing and all other tourism related activities for the Town, to attend staff meetings and to interact with the Town Manager and other Town personnel on an as needed

basis, to plan and implement special events during this period and for the beginning of FY 2008-09.

- 1.4 **Tourism Marketing services include:** Renew community, tri-county, regional and state tourism alliances, oversee development of new Tourist Bureau web page, develop new marketing and strategic promotional sources, plan a new merchandising program, explore and develop new avenues for tourism marketing within the budget limitations that result from the strategic planning retreat.
- 1.5 **Special Events services include:** Create a two track system of events: Large yearly events such as the Arts Festival and smaller potential on-going events such as a Farmer's Market or a Dining in Surfside program, develop an events calendar for Fiscal Year 2008-09 with specific dates, schedule and an overall budget for these events. Begin development of the October to December events.
- 1.6 Consultant assists with or performs only the functions listed in this Agreement. Additional responsibilities can be added on an as needed basis. Consultant does not provide sponsor leads or a database for invitations, volunteers, or committee members. Consultant does not provide public relations work, technical staging, or graphic design work in-house. Consultant will contract these services and supervise them for the Tourist Bureau.

2. **COMPENSATION/PAYMENT-**

- 2.1. Consultant shall provide the Town with an invoice by the fifteenth day of each month following the completion of Work .
- 2.2. The Town shall make payment on said invoices of approved amounts due, as required under the Local Government Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished. If there is a dispute with regard to an invoice, the Town may withhold payment until all requested supporting materials are received from Consultant and the dispute is resolved. The Town may pay to the Consultant the undisputed portion of the invoice.
- 2.3. The Consultant shall be compensated FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00) per month with a minimum of a five-month commitment. The \$4,500 per month will include the services of a second person, who is the administrative and event assistant.
- 2.4. **Reimbursable expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, postage, facsimile, courier services, mileage (at a rate approved by the Town), photo and reproduction services, fees paid to any governmental authority. Any monies advanced by Consultant for expenses will be repaid within thirty (30)) days upon receipt of expense invoice and appropriate back-up materials. Consultant will not

advance more than \$100 for Tourist Bureau materials or services within a given thirty day period.

3. **TERM-** This Agreement shall be effective upon execution by both parties and shall remain in effect to the end of the 2008 fiscal year. At its sole discretion, the Town shall have the option to extend this Agreement. The option to extend this Agreement may be exercised at the sole discretion of the Town Manager. Any extension shall be effective upon receipt of a written notice from the Town Manager to the Consultant dated no later than 30 days prior to the date of termination.
4. **NON-WAIVER-** The approval, and/or acceptance of any part of the Work by the Town shall not operate as a waiver by Town of any other terms and conditions of the Agreement.
5. **INDEMNIFICATION-**
 - 5.1. Consultant shall defend, indemnify, and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Town for all its expenses including reasonable attorney's fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.
 - 5.2. The Consultant shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Consultant shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Agreement. Consultant shall secure all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this Agreement for any reason, Consultant shall transfer such permits, if any, and if allowed by law, to the Town.
6. **CONSULTANT'S EMPLOYEES** –All references in this Agreement to the Consultant shall include Consultant's employees or subcontractors, wherever applicable.
7. **INSURANCE/BONDS** - The Consultant shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be

made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include a minimum of:

7.1. Worker's Compensation and Employer's Liability Insurance: Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy (ies) must include Employer's Liability with minimum limits of \$1,000,000 each accident.

7.2. Comprehensive Automobile and Vehicle Liability Insurance: This insurance shall be written in comprehensive form and shall protect the Consultant and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Consultant's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

7.3. Commercial General Liability: This insurance shall be written in comprehensive form and shall protect the Consultant and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Consultant or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

7.4. Certificate of Insurance: Consultant shall provide the Town Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to require the Consultant to provide a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date

of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.

7.5. **Additional Insured** - The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Consultant in performance of this Agreement. Consultant's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Consultant's insurance. Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

7.6. All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Consultant shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

8. **ASSIGNMENT AND AMENDMENT**- No assignment by the Consultant of this Agreement or any part of it or any monies due or to become due, shall be made, nor shall the Consultant hire a subcontractor to perform its duties under this Agreement without prior written approval of the Town. This Agreement may only be amended, by the parties, with the same formalities as this Agreement.

9. **TERMINATION**-

9.1. Either party may terminate this Agreement without cause upon 30 days written notice to the other party.

9.2. Upon notice of such termination, the Town shall determine the amounts due to the Consultant for services performed up to the date of termination. The Consultant shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

9.3. After receipt of a notice of termination, and except as otherwise directed, the Consultant shall stop all Work under this Agreement, and shall do so on the date specified in the notice of termination.

9.4. The Town may terminate this Agreement upon five (5) days written notice if the Consultant defaults on any material term of this Agreement.

10. **CHOICE OF LAW**- This Agreement shall be governed by the laws of the State of Florida. Venue shall lie in Miami-Dade County.

11. **ATTORNEY'S FEES**- In the event either party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.
12. **ACCESS TO PUBLIC RECORDS**- The Consultant shall comply with the applicable provisions of Chapter 119, Florida Statutes. The Town shall have the right to immediately terminate this Agreement for the refusal by the Consultant to comply with Chapter 119, Florida Statutes. The Consultant shall retain all records associated with this Agreement for a period of three (3) years from the date of Termination.
13. **INSPECTION AND AUDIT**- During the term of this Agreement and for three (3) years from the date of Termination the Consultant shall allow Town representatives access during reasonable business hours to Consultant's and Subcontractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the Town determines the Consultant was paid for services not performed, upon receipt of written demand by the Town, the Consultant shall remit such payments to the Town.
14. **SEVERABILITY**- If a term, provision, covenant, or condition of this Agreement is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.
15. **WAIVER OF JURY TRIAL**. The parties knowingly, voluntarily, intentionally and irrevocably, waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.
16. **COUNTERPARTS**- This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.
17. **INDEPENDENT CONTRACTOR** – It is expressly agreed and understood that the Consultant shall be in all respects an independent contractor as to the Work, and that Consultant is in no respect an agent, servant or employee of the Town. Accordingly, Consultant shall not attain, nor be entitled to, any rights or benefits of the Town, nor any rights generally afforded Town employees. Consultant further understands that Florida Worker's Compensation benefits available to employees of the Town are not available to Consultant, and agrees to provide worker's compensation insurance for any employee or agent of Consultant rendering services to the Town under this Agreement. All employees and subcontractors of the Consultant shall be considered to be, at all times, the sole employees or contractors of Consultant, under its sole discretion and not an employee, contractor or agent of the Town.

18. **ACCIDENT PREVENTION AND REGULATIONS** – Precautions shall be exercised at all times for the protection of persons and property. The Consultant and subcontractors shall conform to all OSHA, Federal, State, County and Town regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities, because of inadequacies to comply with these requirements, shall be borne solely by Consultant responsible for same.
19. **BACKGROUND CHECKS** - The Consultant will be responsible for maintaining current background checks on all employees and subcontractor's employees involved in the performance of this Agreement. Background checks must be performed prior to the performance of any Work by the employee under the Agreement. Written verification of any background checks must be provided to the Town at the request of the Town Manager.
20. **CODE OF ETHICS** - Consultant warrants and represents that its employees will abide by any applicable provisions of the State of Florida Code of Ethics in Chapter 112, Florida Statutes, and the Conflict of Interest and Code of Ethics Ordinances in Section 2-11.1 of the Miami-Dade County Code, as these codes may be amended from time to time.
21. **LAWS, RULES & REGULATIONS** - Consultant shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Consultant shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Agreement. Consultant shall secure all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this Agreement for any reason, Consultant shall transfer such permits, if any, and if allowed by law, to the Town.
22. **POLICY OF NON-DISCRIMINATION** - Consultant shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. Consultant shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.
25. **NOTICES**- Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

Town:

Town of Surfside
9393 Harding Avenue
Surfside, FL 33014
Attention: Town Manager
Telephone: (305) 305-861-4863

Facsimile: (305) 305-861-1302

Consultant:

Ellen L. Wedner
Wedner & Friends
59 Northeast 46 Street
Miami, Florida 33137
Telephone: (305) 573-6477
Facsimile: (305) 573-6479

With a Copy To:

Lynn Dannheisser, Town Attorney
Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Miami, Florida 33133
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement for RTU #4 Replacement on the respective dates under each signature: Town of Surfside through its Town Commission, signing by and through its Mayor, authorized to execute same by Commission action on the ____ day of _____, 2008; and Ellen L. Wedner authorized to execute same

Attest:

TOWN OF SURFSIDE

Beatris M. Arguelles, Town Clerk

By: _____
Pam Brangaccio, Interim Town Manager

Date: _____

WEDNER & FRIENDS

By: _____
Ellen L. Wedner

Date: _____

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF THE TOWN
OF SURFSIDE FLORIDA

Town Attorney

Lynn M. Dannheisser